

WETLANDS COUNCIL

MINUTES

April 9, 2013

The Wetlands Council met on Tuesday, April 9, 2013 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Frank Byron, Ryan Crosbie, James Kennedy, Deborah Lievens, Russ St. Pierre, Seth Prescott, Susan Slack, Thomas Sloan, and Robert Snelling

Absentees: Councilors: Sharon Champagne, and Carol Henderson

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball at 8:00 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Crosbie made a motion to approve the March 12, 2013 minutes as amended, second by Councilor Byron. Motion passed unanimously with Councilor Lievens abstaining.***

2. Public Input: None

3. Status Report

I. New Appeals

II. Decisions that need to be written/finalized and issued.

Docket No: 10-31 WtC – Larry Crocker

Subject: 10/24/10 Denial of Reconsideration regarding a permit issued to Christopher Hemingway, File #2009-03021

Presiding Officer: David Conley, Esq. appointed on May 30, 2012

Action: Council found appeal had been timely filed at its March 13, 2012 meeting. On 3/14/12 sent insufficient appeal letter. 4/2/12 received revised petition for appeal and sent receipt of revised petition. 4/6/12 Mary Ann Tilton filed an appearance on behalf of DES. Council accepted the appeal at its May 8, 2012 meeting. August 10, 2012 issued ruling on Request for 2nd PHC which was denied. Sept. 28, 2012 received Motion to Supplement the Record. Motion was granted and letter issued on 11/5/12. 11/2/12 received Appellant's Witness and Exhibit List. 11/14/12 rec'd Appellant's Exhibits. 11/19/12 Hearing Officer issued an order regarding intervenor's presentation time and exhibit submissions. 11/26/12 rec'd Appearance for Collis Adams. 11/27/12 Hearing and Deliberations were held. January 22, 2013 Council accepted draft Decision and Order, which was issued on 1/25/13. February 27, 2013 received Motion for Rehearing which per Env-WtC 202.09 appears to be untimely. Council voted March 12, 2013 to deny the motion. 3/14/13 issued letter denying the Motion for Rehearing as untimely filed.

Docket No: 12-02 WtC – Rene Montplaisir & Barbara Fraser

Subject: 12/30/11 Administrative Order No. 11-037 WD

Presiding Officer: David Conley, Esq. appointed by AG on 3/15/12

Action needed: Appeal filed timely on 1/20/2012, issued receipt of appeal letter. Council accepted appeal on 3/13/12. PHC is scheduled for May 2, 2012 @ 10:30. 8/21/12 Hearing Officer granted Motion to Continue and issued ruling. 9/14/12 issued rescheduled hearing notice with hearing scheduled for January 22, 2013 at 1 p.m. 1/11/13 received DES' Witness and Exhibit List. 1/14/13 received Appellant's Witness and Exhibit List. Hearing

and deliberations were held on January 22, 2013. March 6, 2013 sent draft Decision to Council members for review. Decision and Order on Appeal was adopted and issued on 3/12/13.

Docket No: 12-03 WtC – Hixon Realty Trust

Subject: 01/24/12 Denial of Reconsideration regarding a permit issued to Steve McKallagat, File #2011-01061

Presiding Officer: David Conley, Esq. appointed on 5/30/12

Actions: 2/22/12 rec'd Notice of Appeal, 2/22/12 issued insufficient notice of appeal letter. 3/22/12 rec'd addendum to Notice of Appeal. 3/23/12 issued receipt of revised appeal letter. Council accepted appeal at its May 8th meeting. The hearing and deliberations were held on Dec. 11, 2012. March 5, 2013 sent draft Decision to Council members for review. Decision and Order on Appeal was adopted and issued on 3/12/13.

III. Hearings or PHCs Pending

Docket No: 12-07/11-03 WtC – Joseph DeVelis

Subject: 1/25/11 Administrative Order No. 11-002 WD

Status: Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: David Conley assigned by AG on Nov. 28, 2012(for consolidated appeals)

Status: Rulings on Motion to Extend Time and Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. Hearing was set for March 13, 2012 @ 9 a.m. 12/27/11 Received DES' and Appellant's Witness and Exhibit Lists. 3/9/12 Motion was granted and notice sent. Hearing scheduled for March 13 was continued. Councilor Crosbie spoke with Atty. English regarding Motion to Modify Hearing Date. March 9, 2012 Motion was granted and notice sent. Hearing rescheduled to October 9, 2012 at 10 a.m. Hearing Postponement notice was issued on Sept. 19, 2012. Oct. 2, 2012 received letter from Atty. Bisbee regarding the Hearing Postponement letter. Status carried forward from Docket No. 12-07 WtC- Subject: 6/20/12 Denial on Reconsideration of Permit application #2012-00368. On July 20, 2012 rec'd Notice of Appeal. 7/24/12 issued receipt of appeal letter. 8/15/12 rec'd appearance from Atty. Evan Mulholland. 9/14/12 issued appeal accepted letter. Council voted Nov. 13th to consolidate this Docket and Docket No. 12-07 WtC – Joseph DeVelis. 11/13/12 Requested Hearing Officer for consolidated appeals. 12/3/12 sent notice of PHC scheduled for Jan. 28, 2013 at 9 a.m. Pre-Hearing Order(PHO) was issued on January 28, 2013 with notice of Hearing scheduled for April 9, 2013 at 9 a.m. March 11, 2013 received Appellants' Memorandum of Law. 3/25/13 received DES' and Appellants' Witness and Exhibit Lists. April 8, 2013 received Assented-to-Motion to Continue. 4/8/13 issued ruling granting Motion to Continue. It was decided to set the Hearing to June 11 at 9 a.m.

Docket No: 12-08 WtC – Renate U. Ranniger

Subject: 7/25/12 Granting of Shoreland Impact Permit No. 2012-01713 to Anna and James Coleman

Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Aug. 22, 2012 rec'd Petition for Appeal. 8/29/12 issued insufficient appeal letter. 9/5/12 rec'd added information and appeals clerk issued receipt of appeal letter. 9/24/12 rec'd Appearance from Permittees' Anna and James Coleman. 11/2/12 rec'd Addendum to Petition for Appeal. 11/13/12 Council accepted the appeal and declined to accept Addendum. PHO was issued on 1/28/13 with notice of Hearing scheduled for May 14, 2013 at 9 a.m. Hearing Officer also granted Addendum to Petition for Appeal at the PHC and noted on the PHO. February 26, 13 received Appellant's Second Amended Petition for Appeal. March 29, 2013 received Appellant's Motion for Summary Judgment. Hearing Officer to act on Motion.

Docket No: 12-10 WtC – Robert and Katherine Michele

Subject: 9/4/12 Denial of Reconsideration for permit No. 2007-02868 issued to Joseph and Linda Bremner

Hearing Officer: David Conley, Esq. appointed by AG on 11/28/12

Actions: On Oct. 4, 2012 rec'd Petition for Appeal and appearance notices for Attorneys David Rayment and Mark Derby. Oct. 5, 2012 issued receipt of appeal letter. Oct. 30, 2012 rec'd Objection to Petition for Appeal. Council accepted appeal with request for complete copies of the relevant court decision to be forwarded to the Council at its Nov. 13, 2012, meeting. Pre-hearing Conference was held on 1/28/13 and continued to May 13, 2013 at 10 a.m. April 2, 2013 received Motion to reschedule Continued Pre-hearing Conference from Appellant. 4/8/13 received Joint Opposition to Appellant's Motion to Reschedule Continued Pre-hearing Conference. Hearing Officer to act on Motion and Objection.

Docket No: 12-12 WtC – William & Elizabeth Frago, Trustees-William S. Frago Trust & Elizabeth Hall Frago Trust

Subject: 9/18/12 Denial of Reconsideration of permit #2011-01677 issued to Hopgood Bixby Shore Family Trust
Hearing Officer: David Conley, Esq. appointed by AG on 12/12/12
Status: On Oct. 17, 2012 received Petition for Appeal. Oct. 18, 2012 issued receipt of appeal letter. Nov. 6, 2012 rec'd Appearance of Attys. Gregory Smith, Mark Rouvalis and Michael Walls. Also received Motion for Summary Affirmance pursuant to Env-WtC 204.01. Nov. 15, 2012 received Objection to Applicants' Motion for Summary Affirmance. December 13, 2012 issued appeal accepted letter. January 4, 2013 received Appearance from Atty. Allen Brooks. 1/23/13 sent notice of PHC scheduled for February 12, 2013 at 9 a.m. 2/7/13 received Assented-To Motion to Continue. 2/11/13 issued letter regarding Motion to Continue which was granted and PHC was rescheduled to 2/15/13 at 9:30 a.m. PHC was held on 2/15/13 and a hearing was scheduled for July 9, 2013. Notice was given per 2/15/13 PHO. 2/15/13 received Permittee's Pre-hearing Conference Memorandum. March 15, 2013 received Appellants' Motion for Summary Judgment. 3/27/13 received Objection to Appellants' Motion for Summary Judgment. Hearing Officer to act on Motion and Objections.

Docket No: 12-13 WtC – Edward Kimball

Subject: 10/16/12 Letter of Deficiency LRM 12-029 issued to Wayne Killam
Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13
Status: On Nov. 15, 2012 received Notice of Appeal. 11/16/12 issued insufficient appeal letter. On December 17, 2012 received Amended Notice of Appeal. 12/18/12 issued receipt of revised appeal letter. Council accepted appeal at its January meeting. January 23, 2013 issued appeal accepted letter. February 20, 2013 sent notice of scheduled PHC for March 19, 2013 at 9 a.m. 2/26/13 received Appearance from Gretchen Hamel and a Motion to Dismiss. March 1, 2013 received Appearance from Regina Nadeau and Joinder to Motion to Dismiss. 3/8/13 received Objection to Motion to Dismiss. Hearing Officer to act on Motion to Dismiss and Objection. March 15, 2013 issued Order granting Motion to Dismiss.

Docket No: 12-15 WtC – Michael Griffin

Subject: 5/21/10 Shoreland Impact Permit #2010-00767 issued to Tamra Kennedy
Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13
Status: On Nov. 28, 2012 received Petition for Appeal, which was untimely filed. Nov. 29, 2012 issued receipt of Appeal letter. Dec. 4, 2012 rec'd Appearance for Gretchen Hamel and Motion to Summarily Dispose of Appeal. Council to accept or decline appeal at its Jan. 8, 2013 meeting. 12/14/12 received Objection to DES' Motion to Summarily Dismiss Appeal. January 23, 2013 issued appeal accepted letter. February 26, 2013 received Motion to Dismiss. March 6, 2013 received Objection to DES' Motion to Dismiss. Draft revised Decision was circulated to the Council on 4/1/13 for review.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No: 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253
Presiding Officer: Chip Kimball assigned by AGO on January 26, 2011
Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11 Rec'd Suggestion of Bankruptcy on Dec. 5, 2011. On 12/6/11 rec'd withdrawal of appearance from appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court.

Docket No: 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047
Presiding Officer: David Conley, Esq. appointed by AG on 12/22/11
Status: On Nov. 2, 2011, rec'd DES' addendum to the Witness and Exhibit List. 11-07-11 Assented-to Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Rescheduled hearing for Feb 14, 2012 @ 9 a.m., notice sent on Dec. 30, 2011. Jan 4, 2012, appellant filed Assented-To Motion to Continue. Jan 9, 2012, PO granted Motion to Continue. Hearing has been rescheduled to June 12, 2012 @ 9 a.m., notice given 1/18/12. Hearing was held June 12th. Hearing was continued until a settlement agreement is made or either party requests to resume the hearing. The appellant's attorney will update the council within 60 days as to progress (Aug. 11, 2012). 2/8/13 issued Hearing Officer's order for an updated status report to be filed by April 5, 2013. April 4, 2013 received Appellant's status report

requesting to submit another report in 60 days. 4/8/13 issued Hearing Officer's Order for an updated status report be filed by June 4, 2013.

Docket No: 12-14 WtC – Mastoran Corporation and B & P Realty Ventures, LLC

Subject: 11/8/12 Denial on reconsideration of Denial of Application File #2012-00768

Hearing Officer: David Conley, Esq. appointed by AG on 2/13/13

Status: November 27, 2012 received Notice of Appeal and Motion to Stay Appeal. 11/28/12 issued insufficient appeal letter. December 28, 2012 received supplement to Notice of Appeal and Motion to Stay Appeal. January 3, 2013 issued receipt of revised appeal. Council accepted appeal at its January meeting. January 23, 2013 issued appeal accepted letter. Hearing Officer to rule on Motion to Stay Appeal. March 13, 2013 issued letter regarding the granting of the Motion to Stay Appeal.

4. Old Business - None

5. New Business -

a. Wetlands Bureau Report –

Collis Adams, Wetlands Bureau Administrator

Staffing: Craig Day has been promoted within the bureau.

Funding: Wetlands and Shorelands fee accounts are stable.

Rule Making: They are on track with overall rule rewrite. The goal is to bring it before JLCAR in early 2014.

Legislation being tracked:

HB 663 – would establish an appeals board for the department. This has been retained in committee in the House.

SB 124 – establishes an integrated land development permit. It has passed through Senate with amendments and is in committee in the House.

HB 416 – would shorten the appeals process for a permitting decision. This would remove the request for reconsideration step. Passed the House and is in Senate committee.

HB 513 – relative to the Shoreland protection act, proposes modifications to some of the provisions. Also has an amendment that gives DES authority to enter property if there is cause.

HB 2 – the budget bill, passed House with amendments and is now in Senate committee. There is concern about the allowing a transfer of dedicated funds to general fund at the end of the fiscal year. This could adversely affect the Wetlands Bureau.

A successful annual meeting was held with EPA on April 8, 2013. Report is available to anyone.

Lori Sommer gave an update on the ARM Fund. Announcement was made to the public on March 1st of the funds available. Approximately \$1 million funds are available throughout the whole state.

6. Next Meetings –

8 a.m. on May 14 with the Renate Ranniger Appeal at 9 a.m.

8 a.m. on June 11 with the Joseph DeVelis Appeal at 9 a.m.

8 a.m. on July 9 with the William & Elizabeth Frago Appeal at 9 a.m.

7. Adjournment

- ***Councilor Byron made a motion to adjourn, second by Councilor Crosbie. Motion passed unanimously.***

Meeting adjourned at 8:35 a.m.